



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2014-1055]

RIN 1625-AA87

Security Zone, John Joseph Moakley United States

Courthouse; Boston, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone within Sector Boston's Captain of the Port (COTP) Zone on the waters in the vicinity of John Joseph Moakley United States Courthouse, Boston, MA. Enforcement of this temporary security zone is for the high profile court proceeding of the Boston Marathon bombing suspect Dzhokhar Tsarnaev at the Moakley Courthouse and is necessary to protect people, property, and the port of Boston from subversive acts.

DATES: This rule is effective without actual notice from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until December 31, 2015. For the purposes of enforcement, actual notice will be used from January 5, 2015 until **[INSERT DATE**

OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2014-1055 and are available online by going to <http://www.regulations.gov>, inserting USCG-2014-1055 in the "Keyword" box, and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone (617)223-4000, e-mail Mark.E.Cutter@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202)366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
USCG	United States Coast Guard
U.S.C.	United States Code
CFR	Code of Federal Regulations
COTP	Captain of the Port

FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

A. Regulatory Information and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this particular temporary final rule. Due to the nature of this high profile court case and the international interest that this trial is expected to generate, the security zone is necessary to help protect people, property, and the port of Boston from subversive acts. The trial is expected to commence on January 5, 2015, and therefore, it would be impracticable to publish an NPRM. Delaying this regulation's effective date for comment would be contrary to the public interest as immediate action is needed to ensure the safety in the surrounding area.

The Coast Guard did, however, publish an NPRM on November 20, 2014 (79 FR 69078), to establish a permanent security zone within Sector Boston's Captain of the Port (COTP) Zone for a five hundred (500) yard security zone, but granting vessels permission to enter the security zone as long as such vessels remain beyond two hundred and fifty (250) yards of the Moakley Courthouse, unless granted access by the COTP or the COTP's representative, and as long as such vessels proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules. We feel we need more time to adequately address the comments received on the NPRM relating to the impact that a two hundred and fifty (250) yard restriction on vessels will have on businesses.

Accordingly, we have elected to establish this temporary five hundred (500) yard security zone, but grant vessels permission to enter the security zone as long as such vessels remain beyond one hundred (100) yards of the Moakley Courthouse, unless granted access by the COTP or the COTP's representative, and as long as such vessels proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation

Rules. Publishing a new NPRM to reflect this change and delaying the effective date would be impracticable and contrary to the public interest since it would inhibit the Coast Guard's ability to fulfill its statutory missions to protect people, property, and the port of Boston from subversive acts.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register for the reason discussed above. For the same reasons discussed in the preceding paragraph, the Coast Guard finds that waiting 30 days to make this rule effective would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis for this rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define security zones.

The trial for the Boston Marathon bombing suspect, Dzhokhar Tsarnaev, is expected to begin on January 5, 2015 at the John Joseph Moakley United States Courthouse, Boston, MA. The trial is expected to last upwards of five months. Due to the nature of this high profile court case

and the international interest that this trial is expected to generate, the Federal Protective Police have requested the Coast Guard issue a security zone around the waterside of the Courthouse to help protect people, property, and the port of Boston from subversive acts.

C. Discussion of Rule

For the reason discussed above, the COTP, Sector Boston, is establishing a temporary security zone. This temporary security zone will be effective and enforced starting on January 5, 2015, and will continue until the trial is completed, and if necessary, during the sentencing phase. This security zone encompasses all U.S. navigable waters, from surface to bottom, within five hundred (500) yards of the John Joseph Moakley United States Courthouse (Moakley Courthouse) in Boston, MA, and following any natural waterside seawall. Specific geographic locations are specified in the regulatory text.

The COTP hereby grants vessels permission to enter this five hundred (500) yard security zone as long as such vessels remain beyond one hundred (100) yards of the Moakley Courthouse unless granted access by the COTP or the COTP's representative, and as long as such vessels proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course,

unless otherwise required by the Navigation Rules.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. First, based on the comments and feedback from the NPRM on the permanent security zone, we feel that decreasing the two hundred and fifty (250) yards to one hundred (100) yards will minimize the impact to vessels, such as commuter ferries servicing Rowes Wharf, because they will be able to transit their normal routes. Second,

the Courthouse is likely to shut down the harbor dock to water Taxis during the trial. Third, mariners may still pass through the security zone, within one hundred (100) yards of the Moakley Courthouse, with authorization from the COTP or a designated on-scene representative. Finally, such notification of this security zone will be published through the local Notice to Mariners, Broadcast Notice to Mariners, and through extensive public outreach.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 persons.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the "REGULATORY PLANNING AND REVIEW" section above.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT", above.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person

listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce

burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary

consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary final rule involves the establishment of a temporary security zone. This rule is categorically excluded from further review under, paragraph 34(g) of figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast

Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS
AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C., 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-1055 to read as follows:

§ 165.T01-1055 Security Zone, John Joseph Moakley United States Courthouse, Boston, MA

(a) Location. This security zone encompasses all U.S. navigable waters, from surface to bottom, within five hundred (500) yards of the John Joseph Moakley United States Courthouse (Moakley Courthouse) in Boston, MA, and following any natural waterside seawall configuration enclosed by a line connecting the following points:

<u>Latitude</u>	<u>Longitude</u>
42°21'15" N	71°02'54" W; Bounded by the curvature of the seawall, thence to
42°21'13" N	71°02'27" W; thence to
42°21'25" N	71°02'17" W; thence to
42°21'32" N	71°02'54" W; Bounded by the curvature of the seawall, thence to
42°21'18" N	71°03'01" W; thence to point of origin.

(b) Regulations. While this security zone is being enforced, the following regulations, along with those

contained in 33 CFR 165.33, apply:

(1) No person or vessel may enter or remain in this security zone without the permission of the Captain of the Port (COTP), Sector Boston. However, the COTP hereby grants vessels permission to enter this security zone as long as such vessels remain beyond one hundred (100) yards of the Moakley Courthouse and as long as such vessels proceed through the area with caution and operate at a speed no faster than that speed necessary to maintain a safe course, unless otherwise required by the Navigation Rules.

(2) Although vessels have permission to enter the security zone under the conditions mentioned in the preceding paragraph, no person or vessel may come within one hundred (100) yards of the Moakley Courthouse under any conditions unless given express permission from the COTP or the COTP's designated representatives.

(3) Any person or vessel permitted to enter the security zone shall comply with the directions and orders of the COTP or the COTP's representatives. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing lights, or other means, the operator of a vessel within the zone shall proceed as directed. Any person or vessel within the security zone shall exit the zone when

directed by the COTP or the COTP's representatives.

(4) To obtain permissions required by this regulation, individuals may reach the COTP or a COTP representative via VHF channel 16 or 617-223-5757 (Sector Boston Command Center) to obtain permission.

(5) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50

U.S.C. 192.

(c) Effective and Enforcement Period. This rule is effective and will be enforced with actual notice starting 12:01 a.m. on Monday, January 5, 2015 to 11:59 p.m. December 31, 2015.

(d) Notification. Coast Guard Sector Boston will give actual notice to mariners for the purpose of enforcement of this temporary security zone. Also, Sector Boston will notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this security zone.

(e) COTP Representative. The COTP's representative may be any Coast Guard commissioned, warrant, or petty officer or any Federal, state, or local law enforcement officer who has been designated by the COTP to act on the COTP's behalf. The COTP's representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, a state or local law enforcement vessel, or a location on shore.

Dated: December 22, 2014.

J. C. O'Connor III,
Captain, U.S. Coast Guard,
Captain of the Port Boston.

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